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22 September 1955

MEMORANDUM FOR THE RECORD

SUBJECT: Missing Persons Act - Discussion with Department of Defense

REFERENCE: A. Memorandum for the Record, Office of General Counsel, dated 14 September 1955
B. Memorandum for the Record, Office of General Counsel, dated 9 September 1955

1. In securing the concurrence of the Director of Personnel and the Comptroller to Reference A, I discussed this subject in some detail with each, and the Director of Personnel recommended that in our discussion with Defense we consider an additional question raised in the following paragraph.

2. When the agency head makes a determination of death and it subsequently develops that the employee is actually alive, what is the status of payments made to various beneficiaries as a result of the finding of death? This question has arisen in some cases of interest to this Agency and, although private insurance companies involved are making no attempt to enforce repayment of policy proceeds, the Bureau of Employees' Compensation is requiring repayment of death benefits. There are also certain Government insurance policies which have been paid over.

3. The only provision of the Missing Persons Act which seems relevant to this case is found in section 9 of the Act (50 USC, App. 1009):

"Payment or settlement of an account made pursuant to a report, determination, or finding of death shall not be recovered or reopened by reason of a subsequent report or determination which fixes a date of death except that an account shall be reopened and settled upon the basis of any date of death so fixed which is later than that used as a basis for prior settlement."

4. On the basis of this provision, it would seem that all agencies of Government are bound not to reopen an account settled as a result of an erroneous determination of death except when death has actually occurred, but subsequent to the date originally determined. If this

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is a correct interpretation of the statute, then, the exception is inserted solely for the protection of the beneficiaries and not for the protection of the Government. It is not clear whether the concept of "settling accounts" refers only to pay and allowance accounts (and perhaps advance accounts for which the individual is responsible at the time he enters a missing status) or whether it is broad enough to cover the paying over of insurance proceeds.

5. Because of a lack of clarity in the present statutory provisions, it would be desirable to insert a provision stating clearly that the proceeds of Government life insurance policies, paid over as a result of an erroneous determination of death, are or are not recoverable from the beneficiaries.

6. The Director of Personnel and the Comptroller would both appreciate greater clarity in this field. As a matter of policy, due to the extreme personal hardship that may result from requiring recovery of these proceeds, the Agency should probably seek a provision that they are not recoverable.

/s/


Office of General Counsel

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File - Proposed Legislation

14 September 1955

MEMORANDUM FOR THE RECORD

Sec 50 USC fpp. 1501-1507

SUBJECT: Missing Persons Act - Discussion with Department of Defense

REFERENCE: Memorandum for the Record, Office of General Counsel, dated 9 September 1955

1. The referenced memorandum discussed certain aspects of the draft permanent Missing Persons Act submitted to the Bureau of the Budget by the Department of Defense. In discussion between this Office and the Office of Personnel, agreement was reached as to certain points which it would be advisable for this Agency to seek to incorporate in the Act.

2. We now propose that the Legislative Counsel should consult with the Legislative Counsel of the Department of Defense in order, if possible, to secure their support of the points proposed by us.

3. The points we would like to raise are three in number:

(a) For the language of section 1 (a)(3) of the present draft, pertaining to coverage of civilians under the Act, we would like to substitute the following language:

"(3) Civilian officers and employees of the departments, wherever serving, except that part-time, hourly or intermittent employees who are residents at or in the vicinity of their places of employment shall be included only upon a determination by the head of the department concerned that the status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force, within the meaning of section 2 of this Act, was the proximate result of employment by the department."

(b) We would like to add to the Act a section providing for the determination of status of dependents:

"A dependent of any person in active service, as defined by this Act, is a 'person' under this Act for the sole purpose of determining status as provided in sections 5 and 9,

and any determination under these sections by the head of the department concerned shall be ~~conclusive~~ on all other departments of the Government; Provided, that nothing in this section shall be construed as conferring upon any dependent any right to pay, allowances or other compensation to which not otherwise entitled."

(c) We believe that the language of the present Act, also embodied in the draft permanent Act (at line 12 of page 2 of Tab C), "or may become entitled thereafter", permits agency heads to establish promotion policy for individuals in a missing status. If either the Department of Defense or the Bureau of the Budget disagree with this interpretation, we intend to explore the possibility of inserting additional language in the Act which would permit the establishment of such a policy.

4. We do not consider it advisable that the Act should make any special provisions for this Agency. It would be preferable if the general provisions can be so phrased as to satisfy this Agency's requirements. In the opinion of this Office, the draft Act, except for the three points raised above, will satisfy the requirements of the Agency.

LAWRENCE R. HOUSTON
General Counsel

CONCURRENCE:

Director of Personnel

[S] 21 Sept 55
Comptroller

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Distribution:

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EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
Washington 25, D. C.

July 18, 1955

My dear Mr. Secretary:

This is in reference to an item in your 1955 legislative program entitled "To amend further the Missing Persons Act, as amended."

This proposal contains provisions with which we have previously concurred informally. However, upon further review and consideration of a proposal advanced by the Department of Commerce we have come to the conclusion that it would be desirable to provide coverage for civilian employees along lines which you originally recommended. This will have the effect of bringing them under the coverage of the Missing Persons Act whether serving in this country or overseas. Accordingly, it is recommended that the provisions of the proposed Section 1(a)(3) be revised to provide coverage for civilian employees wherever serving, except that persons employed in the United States and those employed outside the United States who are residents at or in the vicinity of the place of their employment and who are not living there solely as a result of their employment should be provided with coverage only while in the course of their employment.

Subject to the foregoing, you are advised that there would be no objection to the presentation of the measure for the consideration of the Congress.

Sincerely yours,

(Signed) Roger W. Jones
Assistant Director for
Legislative Reference

The Honorable

The Secretary of Defense

Attention: Mr. Frank J. Sherlock

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SECTIONAL ANALYSIS

of a bill

To amend further the Missing Persons Act, as amended.

Section 1(a) would amend section 1(a)(3) of the Missing Persons Act (50 U.S.C. App. 1001(a)(3)) to provide that part-time, hourly, or intermittent employees of the Government of the United States, who are residents of the places of employment in United States Territories and possessions, or in foreign countries, would be extended the benefits of the Act if a determination is made by the head of the department concerned that the missing status was the proximate result of employment by the department. Full coverage would be retained for civilian officers and employees of the Executive departments during such time as they may be assigned for duty or serving in Alaska or outside the continental limits of the United States. Existing law excludes from coverage part-time or intermittent employees or native labor casually hired on an hourly or per diem basis.

Section 1(b) would amend section 2 of the Missing Persons Act (50 U.S.C. App. 1002) to provide that any person in active service or performing certain training duty, officially determined to be absent in a missing status, would be entitled to receive or to have credited to his account the same pay and allowances to which he was entitled at the beginning of such absence, or might become entitled thereafter, and such entitlement would terminate at such date as the department concerned receives evidence of death or until the presumptive date of death, which normally would be twelve months and one day from the date the missing status is first determined by the head of the department concerned. There would be no entitlement to pay and allowances for any period of absence from post of duty without official authority. Entitlement to pay and allowances would be authorized for persons who enter a missing status while on brief tours of training duty only when such persons enter a missing status as a result of the performance or prescribed duty ordered by competent authority. Existing law provides coverage under the Act only for persons in active service. The proposed amendment extends coverage to include, in addition to persons on active service, persons on training duty under certain conditions.

Sections 1(c) and 1(d) would amend sections 6 (50 U.S.C. App. 1006) and 9 (50 U.S.C. App. 1009) of the Missing Persons Act by making certain technical revisions in language consistent with the amendments proposed in section 1(b).

Existing law does not permit an injured person to make application for transportation of his household and personal effects to a location determined in advance other than his official residence of record. In addition, it does not provide for the sale by the Government of such household and personal effects in emergencies. Section 1(e) would amend section 12 of the Missing Persons Act (50 U.S.C. App. 1012) to provide that the dependents and household and personal effects of any person in active service who is officially reported as dead, injured, missing for thirty days or more, interned in a foreign country, or captured, may be moved to the official residence of record for such person, or upon application by such dependents, next-of-kin, or such other persons having a substantial interest in the return of such household and personal effects, or upon the person's own application if injured, to such other location approved by the head of the department concerned. When an emergency exists, the head of the department concerned may sell the motor vehicles and other bulky items of personal effects after ascertaining, if practicable, the desires of the other interested persons, and the net proceeds of such sale shall be transmitted to the owner or other persons of interest if such persons and their addresses are ascertainable. If not ascertainable, the net proceeds may be covered into the Treasury as miscellaneous receipts, with a specifically prescribed method of making claim thereto, subject to the operation of a 5-year statute of limitations. The head of the department concerned also would be authorized to store household and personal effects of such missing person until such time as proper disposition can be made.

Section 1(f) would amend section 14 of the Missing Persons Act (50 U.S.C. App. 1014) by deleting the word "enemy" where it appears therein and inserting in lieu thereof the word "hostile".

Section 1(g) would amend section 15 of the Missing Persons Act (50 U.S.C. App. 1015) to eliminate the reference to the termination date (July 1, 1955), and make the proposed legislation retroactive to June 24, 1948, the date of enactment of the Selective Service Act of 1948.

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